

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5370 of 2025

Arising Out of PS. Case No.-233 Year-2024 Thana- CHERIYA BARIYARPUR District-
Begusarai

Santosh Kumar @ Santosh Mahto Son of Nandu Mahto, Resident of village -
Bikrampur Badhkurwa, P.S.- Cheriya Bariyarpur, District - Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Sr. Advocate Ms. Komal, Advocate Ms. Richa Rajiv Singh, Advocate
For the State	:	Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

2 15-02-2025 Heard Ld. counsel for the petitioner and Ld. APP for
the State.

2. The present petition has been filed on behalf of the
petitioner, apprehending his arrest, in connection with Cheriya
Bariyarpur P.S. Case No.- 233 of 2024 dated 29.12.2024,
registered for the offences punishable under Section 30(a) of the
Bihar Prohibition & Excise (Amendment) Act, 2022.

3. As per allegation, there is recovery of 4.5 litre illicit
liquor from place adjoining the Murgi Farm.

4. Ld. counsel for the petitioner submits that the
Petitioner is innocent and has falsely been implicated in this
case. He further submits that as per the F.I.R. itself, there is no
recovery from the house of the petitioner or conscious



possession of the petitioner. Hence, no *prima facie* case is made out against the petitioner. He further submits that the present petition is maintainable and petitioner is entitled to get enlarge on bail.

5. It is also stated in paragraph no. 2 of the bail petition that the petitioner has not moved this Court earlier either for anticipatory bail or regular one in the instant case.

6. It has further been stated in paragraph no.3 of the petition that the petitioner has been made accused in one other case.

7. However, Ld. APP for the State vehemently opposes the prayer of the Petitioner for bail submitting that the present petition is not maintainable because petitioner has one criminal antecedent of similar nature and he refers to and relies upon Proviso to Sub Section 2 of Section 76 of Bihar Prohibition and Excise Act, 2016, as amended time to time.

8. Section 76 of Bihar Prohibition and Excise Act, 2016 is referred to for ready reference, which is as follows:

Section 76 of the Act

As per Section 76 of the Act, the offences committed under the Act is cognizance and non-bailable and Sections 360 and 438 of the Cr.PC are not applicable, in case of such offences



committed under the Act. However, Proviso to Sub Section 2 of Section 76 of Bihar Prohibition and Excise Act, 2016 provides that if the offence is committed under Section 37(1) and Section 54 of the Act, the offence will be bailable.

9. However, in the case at hand, I find that the case against the petitioner is based on recovery of the illicit liquor and no consumption of the same. Hence, with all due regard, I disagree with the submission of the learned counsel for the State, the present petition is not maintainable in view of Proviso to Sub Section 2 of Section 76 of the Act. I further find that alleged recovery has not been made from the house of the petitioner or his conscious possession of the petitioner. It has been made from open space which may be adjoining to Murgi Farm. Hence, no *prima facie* case is made out against the petitioner. As such, Section 438 of Cr.PC is not applicable against the petitioner and the present petition is maintainable.

10. Considering the aforesaid facts and circumstances, **this petition is allowed**, directing the petitioner, above-named, to be enlarged on bail, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt / production of a copy of this order, on his furnishing bail bonds in the sum of Rs.10,000/- (Ten Thousand)



with two sureties of the like amount each to the satisfaction of Ld. Exclusive Special Excise Judge-I, Begusarai, in connection with Cheriya Bariyarpur PS. Case No.- 233 of 2024, subject to the conditions as laid down under Section 438 (2) Cr.P.C. and on the following conditions:

(i) In case, it is brought to the notice of the court below that the petitioner has criminal antecedents other than the disclosed one, Ld. court below shall cancel the bail bonds of the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.

(ii) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, Ld. court below shall cancel the bail bonds of the petitioner.

(Jitendra Kumar, J.)

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